



October 8, 1999

Mr. Monty Wade Sullivan
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-2895

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128151.

The Houston Police Department (the “department”) received a request for information relating to the death of a police officer. You have released some of the requested information. You contend that the remaining requested information is made confidential pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code and excepted from public disclosure by section 552.108 of the Government Code.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters’ and police officers’ civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers: one that is maintained by the city’s civil service director and the other by the city police department.

Information contained in personnel files held by the civil service director, including all records relating to misconduct by police officers that resulted in disciplinary action, as contemplated by chapter 143, must be released to the public unless the information comes within one of the Public Information Act’s exceptions to required public disclosure. You inform us, however, that the information at issue here is contained in the records of an internal affairs investigation that has not resulted in disciplinary action. *See Gov’t Code*

§ 143.089(a)(2). You therefore contend that the requested information is made confidential under section 143.089(g) of the Local Government Code and thus may not be released to the requestor.

You inform us that the Homicide and Internal Affairs Divisions are investigating the death concurrently. While we generally agree that the department's records of internal affairs investigations that do not result in disciplinary action are confidential under section 143.089(g), the information at issue is contained in department offense report and investigation records separate and apart from those of the internal affairs investigation. The department may not engraft section 143.089's confidentiality to other records that exist independently of the internal affairs investigation.

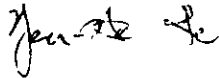
Next, we will consider your assertion that section 552.108 excepts the requested information from public disclosure. Section 552.108, the "law enforcement exception," provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from public disclosure if release of the information would interfere with the detection, investigation or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to an ongoing investigation and possible prosecution. However, by letter dated September 13, 1999, the requestor's attorney informed us that homicide Sergeant Waymon Allen, the primary investigating officer assigned to the investigation, advised that "the death is no longer pending as an open, active investigation in the homicide department." This office is unable to resolve disputed questions of fact. Open Records Decision Nos. 554 (1990), 552 (1990). Accordingly, if the investigation is ongoing, we agree that you may withhold the information under section 552.108(a)(1) because release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). However, if the investigation is not ongoing, the department may not withhold the information under section 552.108(a)(1) because the department has not shown the applicability of section 552.108(a)(1).

The department also claims that section 552.108(a)(2) excepts the information from public disclosure because the investigation did not result in a conviction or deferred adjudication. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Thus, if the investigation into the death has concluded in a result other than a conviction or deferred adjudication, the department may withhold the information under section 552.108(a)(2).

We note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 128151

Encl. Submitted documents

cc: Mr. Michael J. Novominsky
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Houston, Texas 77096-3736
(w/o enclosures)